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October 1, 1973

OGC PERFORMANCE EVALUATION AND ANNUAL REPORT--FY 1973

I. GENERAL

1. The function of the Office of General Counsel is to perform the legal services needed by the Director, the Deputy Director, the Agency and its components. The nature and scope of legal services performed therefore vary with the changes in the activities and needs of those clients. In general, external factors play a part in OGC functions only to the extent that such factors affect the operations of our clients. We have felt, for example, that to some degree an international crisis or significant international event may cause a temporary fall-off of OGC activity as clients devote their time to the crisis. Thereafter, the legal aspects or consequences of the event may require attention.

2. From the time of the establishment of CIA and the legal staff, the OGC management philosophy has contemplated a staff function of assisting and advising operating components, but OGC itself is not to be an operations office. To this end several activities--contract personnel, matters involving the Bureau of Employees' Compensation and liaison with the Immigration and Naturalization Service--came into being in this Office early in the life of CIA, but later transferred to the Office of Personnel and the Office of Security, respectively. But there have been several significant exceptions to this concept of operations:



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c. The General Counsel is the Agency representative on the Interagency Classification Review Committee, established just over one year ago to monitor, oversee and direct the classification and declassification of national defense information throughout the Executive Branch. In this capacity the General Counsel participates in directing certain activities of the Agency, and of other departments and agencies as well.

d. OGC representatives serve on various committees, as member, chairman, or legal adviser, and have both management and legal responsibilities. These include the Educational Aid Fund, the Editorial Board of Studies in Intelligence, the CIA Retirement Board, the CIA Honor and Merit Awards Board, the VIP Board of Trustees, the Board of Review of Shortages and Losses and the Administrative Allowances Committee.

3. At the close of fiscal 1973, Mr. Lawrence R. Houston retired, having served as General Counsel of CIA since its inception, and with its predecessor organizations. He had planned to retire in March 1973 but agreed to stay on at the specific request of the new Director, Dr. James Schlesinger, and to continue to serve at the Director's pleasure. Mr. Houston continues to be available as a consultant and the new General Counsel has not been selected, so the full impact of the departure of Mr. Houston has not been felt in the operations of OGC. Nevertheless, the fact that the only General Counsel in the life of the Agency was scheduled to depart during the year, and did so, has at least caused all concerned to realize that changes in the legal office are to be anticipated. Management philosophy and goals in the future may well change.

4. No changes in objectives are expected in the coming year.

II. ACCOMPLISHMENTS

5. a. The OGC Objective

(1) Statement of Objective

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The basic OGC objective is to facilitate the performance of CIA activities and to protect and strengthen CIA and intelligence law. This objective is not readily divisible.

(2) Action Plan

Efforts to accomplish this objective require extensive work with courts. It is necessary to bring to the attention of judges and lawyers any Agency interests in a case and to inform them concerning classified information. Often these situations involve cases in which CIA is not a party to the litigation. These considerations permit judges to order special arrangements for handling classified information; for example, the use and protection of classified affidavits, as was done in the Marchetti case. It also permits prosecutors to develop their cases with full knowledge as to the availability or unavailability of testimony and affidavits by CIA personnel. We have been able to respond to requests from the Department of Justice concerning possible surveillance of persons who may become involved in criminal cases, which is now a frequent requirement in criminal cases. We have been able to make arrangements with various courts to avoid having CIA employees who are under cover serve on juries when their true employment could not be revealed. Various procedural and advisory actions were taken in the recent surplus personnel exercise designed to avoid litigation. Our work on the Interagency Classification Review Committee is extensive. We attend and participate in the meetings. We staff out ICRC decisions and action within the Agency and we assist in the Agency implementation of the Executive Order. Preparation and Publication of the Guide to Central Intelligence Agency Statutes and Law are fundamental aspects of our efforts to develop and protect intelligence law. Our daily assistance to Agency components concerning projects and operations is a mainstream of our work. The ~~thus far successful~~ effort to enjoin Marchetti, a former employee from publishing classified information was a significant step in the law to protect information. This

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is a precedent of first importance, the first effort by the government to protect classified information by enjoining former employees.

With respect to legislative aspects, the amendment in May 1973 to the CIA Retirement Act was instrumental in the Director's effort to reduce the number of Agency employees. Language was developed for inclusion in what became the Fulbright amendment to lessen its impact on CIA activities in Indochina. Assistance was provided to the Director and the Deputy Director and the former Director and the former Deputy Director in connection with their testimony before Congressional committees concerning Watergate and Ellsberg matters which hopefully reduced the impact those events have had on the functions and activities of the Agency. We continue to work closely with Special Prosecutor Cox where his interests involve CIA matters. In the area of drug control, we attempt to assist Agency components to make their authorized contributions to the efforts of the government and the Drug Enforcement Administration, but within the statutory restrictions against law-enforcement, police or internal security functions by CIA. Additionally, OGC is now engaged in passing upon the legality of Agency activities, with special concern also for adhering to the spirit, as well as the letter, of the law. There is a continuing requirement in the areas of claims, contract work, negotiating disputes, personnel, insurance and security questions and other fields of administrative law.

(3) and (4) Progress and Shortfall and Problems OGC



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The Marchetti decision has been drawn upon by other agencies in the intelligence community and OGC has played a part in this. The recent reduction in force actions have not yet resulted in any lawsuits and we do not now know of any suits being contemplated.

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(One former employee involved in the surplus action has sued an Agency employee for libel, taking the position that criticism by a fellow employee contributed to the decision to terminate him.) Similarly, the amendment in May of 1973 to the CIA Retirement Act increasing the quota for retirements prior to 1 July 1973 undoubtedly did much to prevent inequities and litigation. The Office has worked extensively with prosecutors and counsel and has conferred with judges when appropriate in order to make known in proper and timely fashion Agency interests in litigation or pending litigation, including litigation in which the Agency has not been a party. To the extent that the Agency and Agency employees have not been brought into litigation the security interests of the Agency have been served. There has been considerable progress in the Agency's implementation of the Executive Order concerning classification of information (E.O. 11652).

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there has been very little consideration of need for amendment and the means to achieve amendments. The developing requirement that the government reveal and produce indications of surveillance of persons involved in criminal cases is posing problems which will require careful attention over the coming years. Modifications of government procurement law, now at an advanced legislative stage, may require new CIA approaches and concepts. The effort to conduct a more open intelligence agency while retaining necessary protection of information will require new and imaginative effort. To this end, much work has been devoted to the matter of amending the National Security Act of 1947 in order to tighten the Agency's charter. OGC is being called on to take an active part in making certain that Agency activities remain within our prescribed statutory authority. There is a need to delegate authority to various levels. Much work has been done in this area, but more is required.

(5) Future Plans

It will be necessary to meet these changing requirements and to make personnel adjustments as needed. It will be particularly important to recognize and understand the impact on OGC operations which a new situation or a new requirement will cause. This includes such events as a new court decision in an area of law particularly significant to CIA or intelligence. Further, it is believed highly likely that the Agency will be increasingly engaged in litigation.

(6) Costs

The OGC budget [] years for FY 1973 states the costs of the OGC objective. Because the objective essentially is indivisible and because to a great degree our employees work in all areas of OGC responsibilities, no useful breakdown or estimate of these amounts is feasible.

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III. OTHER ACTIVITIES

6. We have attempted to include in the above a narration or examples of all OGC activities.

IV. RESOURCES SUMMARY

7. See Section II, Item 6.

V. RECOMMENDATIONS

8. No specific recommendations are suggested at this time. With the new Director having recently taken office and top level reorganization having progressed, the position and responsibilities of this Office are becoming more clear and it is expected that this will continue.



John S. Warner
Acting General Counsel

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